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3 COUNTY CLERK
4 NO: 21-2-04494-0

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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR**
8 **THE COUNTY OF PIERCE**

9

10 BRANDON THOMAS ROBERTS,

11 Plaintiff,

12 v.

13 CITY OF BAINBRIDGE ISLAND, a political
14 subdivision of the State of Washington,
15 MATTHEW HAMNER, Chief of the Bainbridge
16 Island Police Department, in his personal
17 capacity; DALE JOHNSON in his personal
18 capacity; WELLPATH, LLC, a Delaware
19 Limited Liability Company and f.k.a. CORRECT
20 CARE SOLUTIONS, LLC a Delaware Limited
21 Liability Company; KITSAP COUNTY, a
Washington State municipality, MARK
RUFENER, in his personal capacity; JOHN
GESE, in his personal capacity; GARY
SIMPSON, in his personal capacity; JOHN AND
JANE DOES 1-30, in their personal capacities,

22 Defendants.

23

24 **NO.**

25 **COMPLAINT**

26

27 **COMES NOW** the above-named Plaintiff, by and through his attorney of record,
Kylie J. Finnell of Kitsap Law Group, to complain and allege as follows:

I. PARTIES

1.1 Plaintiff BRANDON THOMAS ROBERTS is an adult resident of Pierce County.

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1 1.2 Defendant City of Bainbridge Island is a political subdivision of the State of
2 Washington. City of Bainbridge Island has various departments, including but not limited to
3 the Bainbridge Island Police Department (“BIDP”), which is responsible for providing law
4 enforcement services within City of Bainbridge Island.

5 1.3 Defendant MATTHEW HAMNER, was the chief of BIPD, who at all times relevant
6 hereto, was acting under color of law. In this role as Chief, Defendant Hammond was
7 responsible for the supervisory decisions as they relate to Defendant Officer Dale Johnson.
8 Defendant Hammond’s acts and omissions were, at all times alleged, affirmatively linked to
9 the behavior of Defendant Officer Dale Johnson, in the sense that he encouraged, condoned,
10 and/or acquiesced in their acts, omissions and established practices.

11 1.4 Defendant DALE JOHNSON was a BIPD Officer who, at all times relevant hereto,
12 was acting within the scope of his employment, and under color of law.

13 1.5 Defendant WELLPATH, LLC, a Delaware Limited Liability Company and f.k.a.
14 CORRECT CARE SOLUTIONS, LLC (“CCS”) is a Delaware limited liability company with
15 corporate headquarters in Tennessee. Defendant Kitsap County contracted with CCS to
16 provide medical services to detainees and inmates at the Kitsap County Jail while Mr. Roberts
17 was detained in there in.

18 1.6 Defendants JOHN AND JANE DOES 1-15 are yet-identified CCS employees
19 responsible for policymaking regarding and/or administrating the provisions of healthcare to
20 Mr. Roberts.

21 1.7 At all material times, each CCS Defendant, including Defendants Doe 1-15, acted
22 under color of state law and were state actors.

1 1.8 Defendant KITSAP COUNTY is a political subdivision of the State of Washington.
 2 Kitsap County has various departments including but not limited to the Kitsap County
 3 Sheriff's Office, which operates the Kitsap County Jail ("Jail"). Kitsap County is, and was at
 4 all times mentioned herein, responsible for the actions or inactions, and the polices,
 5 procedures, and practices/customs of all health services provided to detainees in the Jail.
 6

7 1.9 Defendant MARK RUFENER was Kitsap County's Corrections Chief. Defendant
 8 Rufener was an administrator who supervised the Jail at the time of Mr. Roberts was detained
 9 in the Jail and was responsible for ensuring the presence and implementation of proper
 10 policies, procedures, and training. Defendant Rufener Defendant Rufener was responsible for
 11 the training, supervision and discipline of County Jail employees and/or agents, including his
 12 co-Defendants, CCS, and Does 1 through 30.
 13

14 1.10 Defendant JOHN GESE is the Kitsap County Undersheriff. Defendant Gese is an
 15 administrator who supervised the Jail at the time of Mr. Roberts was detained and
 16 responsible for ensuring the presence and implementation of proper policies, procedures,
 17 and training. Defendant Gese was responsible for the training, supervision and discipline
 18 of Jail employees and/or agents, including his co-Defendants, CCS, and Does 1-30.
 19

20 1.11 Defendant GARY SIMPSON is the Kitsap County Sheriff. Defendant Simpson is the
 21 administrator who supervised the Jail at the time Mr. Roberts was detained at the Jail.
 22 Defendant Gese was responsible for the training, supervision and discipline of Jail
 23 employees and/or agents, including his co-Defendants, CCS, and Does 1-30.
 24

25 1.12 Defendants Simpson, Gese, and Rufener shall be referred to collectively as "Kitsap
 26 Policymaking Defendants." At all material times, each Kitsap Policymaking Defendant acted
 27 under color of law and was a state actor.

1 1.13 Defendants JOHN AND JANE DOES 16-30 are yet-identified Kitsap County
 2 employees responsible for policymaking regarding and/or administrating the provisions of
 3 healthcare to Mr. Roberts.

4 1.14 Defendants Kitsap County, Simpson, Gese, Rufener, and Does 16-30 shall be referred
 5 to collectively as “County Defendants.” At all material times, each County Defendant acted
 6 under color of the laws, statutes, ordinances, and regulations of the State of Washington and
 7 was a state actor.

9 **II. JURISDICTION AND VENUE**

10 2.1 All acts and omissions alleged herein occurred in Kitsap County, Washington.

11 2.2 Venue is proper in Pierce County Superior Court pursuant to RCW 36.01.050. Pierce
 12 County is one of the nearest two judicial districts to Defendant Kitsap County. This court has
 13 jurisdiction over the parties and subject matter of this action.

15 **III. FACTS GIVING RISE TO CLAIM**

16 3.1 On February 7, 2018, Law enforcement officers and medical first responders
 17 responded to the parking lot of Ordway Elementary in Bainbridge Island, Washington after
 18 receiving reports of an unconscious woman. The woman was Mr. Roberts’ friend, and when
 19 first responders arrived, Mr. Roberts was beside her giving her CPR. Mr. Roberts told the
 20 first responders that she had overdosed on heroin. Some first responders on the scene told
 21 Mr. Roberts to leave because his car, a Ford Mustang, was in the way and he was hovering
 22 around worried about his friend. Mr. Roberts left driving his Ford Mustang.

23 3.2 Despite Mr. Roberts being free to leave, Defendant Johnson pursued Mr. Roberts in
 24 his patrol car after he drove away. Later, law enforcement witnesses claimed Mr. Roberts
 25 was ordered to stay and struck an officer in the knee as he left.

1 3.3 Defendant Johnson eventually struck the driver's side door of Mr. Roberts' vehicle
 2 when he reached a dead end making it impossible for Mr. Roberts to exit through the
 3 driver's side door of his vehicle.

4 3.4 Law enforcement officers, including Defendant Johnson surrounded Mr. Roberts'
 5 vehicle and ordered him to exit. Mr. Roberts initially refused to exit, and made unflattering
 6 comments to Defendant Johnson.

7 3.5 Mr. Roberts eventually began maneuvering to exit through the front passenger door
 8 as the driver's side door was blocked by Defendant Johnson's patrol car. Mr. Roberts is 6'
 9 2" and weighs approximately 240 pounds so him exiting past the center console through the
 10 passenger side door would be an awkward maneuver in a Ford Mustang.

11 3.6 As Mr. Robert's was preparing to exit, Defendant Johnson moved from his position
 12 on the driver's side of the vehicle where Mr. Roberts was calling him names, to the
 13 passenger side and shot Mr. Roberts in the chest and hand without just cause.

14 3.7 Defendant Johnson later alleged that while Mr. Roberts was inside the vehicle he
 15 lunged across the interior of the vehicle with a knife and was a threat to the officers outside
 16 the vehicle.

17 3.8 No other law enforcement officers near the vehicle discharged their weapons.

18 3.9 Numerous bystanders saw Defendant Johnson shoot Mr. Roberts and recorded the
 19 shooting on video. No video shows Mr. Roberts lunging at anyone with a knife and
 20 evidence later showed that one of Defendant Johnson's bullets went through Mr. Roberts'
 21 hand while it was on the steering wheel.

22 3.10 Defendant Johnson was wearing a department issued body camera but did not
 23 activate his body camera until after he shot Mr. Roberts.

1 3.11 Mr. Roberts was the second person Defendant Johnson shot while on duty in less
 2 than a year. Defendant Johnson was one of several officers who shot and killed Robert D.
 3 Yeiser on July 9, 2017.

4 3.12 BIPD has a policy, custom and established practice of condoning and encouraging
 5 the type of shoot first ask questions later mentality deployed by Defendant Johnson.

6 3.13 In 2012 a federal jury found Bainbridge Island and its Police Chief liable and
 7 awarded the family of Doug Ostling \$1,000,000.00 after he was shot by BIPD officers who
 8 were coworkers with Defendant Johnson.

9 3.13 BIPD also has a policy, custom, and established practice of failing to supervise and
 10 train its officers to use deadly force as a last resort, as required by generally accepted police
 11 practices.

12 3.14 Defendant Johnson was not disciplined, reprimanded, or provided additional training
 13 for his reckless and negligent acts and omissions. Instead, he was praised for bravery by his
 14 supervisors including Defendant Hamner and given a medal.

15 3.15 Each of these policies, customs, and established practices, described above and in
 16 other respects as well, were a direct, proximate cause of Mr. Roberts' injuries.

17 3.16 After he was shot, Mr. Roberts was transported to Harborview Medical Center in
 18 Seattle, WA for medical care for the gunshot wounds.

19 3.17 Bainbridge Island police officers were assigned to guard Mr. Roberts at the hospital
 20 until he was discharged pending investigation of Defendant Johnson's allegations.

21 3.18 The day after he was shot, Mr. Roberts was transported by Bainbridge Island police
 22 officers to the Kitsap County Jail.

1 3.19 Bainbridge Island Police Officer Bob Day met with the medical staff at the jail and
 2 gave them the discharge paperwork from Harborview Medical Center. The medical staff at
 3 Harborview had given explicit instructions for how to care for Mr. Roberts injuries.

4 3.20 Harborview's instructions included pain medication oxycodone, and twice daily
 5 chest wound packing with lidocaine jelly.

6 3.21 On February 9, 2018, Mr. Roberts was charged by the Kitsap County Prosecuting
 7 Attorney's Office under Kitsap County Superior Court Cause No. 18-1-00233-18 with one
 8 count of Assault in the First Degree against "Bainbridge Police Department Officer John
 9 Doe".

10 3.22 Mr. Roberts was scheduled to appear in court on February 9, 2018 for arraignment
 11 but was unable to appear because he was bleeding and had not had his bandages changed.

12 3.23 Mr. Roberts was interviewed for the preparation of a bail study on February 9, 2018
 13 and noted he was supposed to "have the gauze changed and it has not been done."

14 3.24 On February 13, 2018, Mr. Roberts was arraigned, entered a plea of not guilty and
 15 held on \$1,000,000 bail. Mr. Roberts was unable to post bail and remained in custody
 16 pending trial.

17 3.25 In the following weeks while awaiting trial and recovering from his injuries, the jail
 18 medical staff mocked and laughed at Mr. Roberts' pleas for pain relief medication, denied
 19 his pleas for pain medication, forced him to sleep on the floor exacerbating the pain from the
 20 wounds, did not follow the discharge instructions from Harborview, and frequently delayed
 21 changing his bandages resulting in him having to ball up available clothing to stop the
 22 bleeding from the gunshot wound to his chest and failed to use the lidocaine jelly as
 23 recommended by Harborview for pain.

1 3.26 On March 11, 2019, the information was amended and included the charges of
 2 Assault in the First Degree on Officer Johnson, one charge of Assault in the First Degree on
 3 Kitsap County Sheriff's Deputy David R. Corn (another officer near Mr. Robert's vehicle),
 4 one charge of Possession of a Controlled Substance, and one charge of Attempting to Elude
 5 a Police Vehicle and proceeded to jury trial.
 6

7 3.27 On March 28, 2019, Mr. Roberts was found not guilty of the count of Assault in the
 8 First Degree on Officer Johnson, guilty of Possession of a Controlled Substance and
 9 Attempting to Elude a Police Vehicle, and the jury did not reach a unanimous decision as to
 10 the remaining Assault in the First Degree on Officer Corn.
 11

12 3.28 The Court released Mr. Roberts after the verdict with no bail required.
 13

14 3.29 On December 6, 2019 Mr. Roberts plead guilty to one count of Assault in the Fourth
 15 Degree and one count of Unlawful Carrying or Handling of a Weapon to avoid being retried
 16 on the remaining count of Assault in the First Degree on Officer Corn.
 17

18 3.30 Mr. Roberts continues to experience the mental and physical effects of his injuries
 19 related to Officer Johnson shooting him, and the hostility and indifference shown to him by
 20 medical staff in the Jail.
 21

22 3.31 He is undergoing treatment for anxiety and posttraumatic stress disorder which have
 23 been exacerbated by the Defendants.
 24

25 3.32 He experiences reduced sensation and numbness in the fingers of his injured hand.
 26

27

IV. FIRST CAUSE OF ACTION
42 U.S.C. § 1983 – Excessive Force and Brutality

28 4.1 By virtue of the facts set forth above, Defendants City of Bainbridge Island, Hamner,
 29 and Johnson are liable for deprivation of Mr. Robert's civil rights guaranteed by the Fourth
 30

31 Amendment to the Constitution of the United States and 42 U.S.C. § 1983, to be free from
 32

33 COMPLAINT - 8

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1 the use of excessive force and physical brutality.

2 4.2 By virtue of the facts set forth above, Defendant City of Bainbridge Island and
 3 Defendant Hamner are liable under *Monell v. Department of Social Services of City of New*
 4 *York*, 436 U.S. 658 (1978), in that a policy or custom can be inferred from a showing of
 5 ratification of an unconstitutional act and BIPD's polices, customs, and established
 6 practices.

8 **V. SECOND CAUSE OF ACTION**
 9 **42 U.S.C. § 1983 – Deliberate Indifference**

10 5.1 By virtue of the facts set forth above, Defendants CCS, Kitsap County, Ruefner,
 11 Gese, Simpson, and Does 1-30, acting under the color of state law in their individual
 12 capacities, deprived Mr. Roberts as a pretrial detainee of the rights, privileges and
 13 immunities secured by the Fourteenth Amendment by subjecting him, or through their
 14 deliberate indifference, allowing others to subject him, to delay and denial of access to
 15 medical care for a serious medical condition.

17 5.2 By virtue of the facts set forth above, Kitsap County and its Policymaking
 18 Defendants, and CCS each permitted and failed to prevent the unconstitutional acts of
 19 other Defendants and individuals under their supervision and control, and failed to
 20 properly supervise such individuals, with deliberate indifference to the rights and
 21 serious medical needs of Mr. Roberts.

23 5.3 These Defendants knew that Mr. Roberts' gunshot wounds were serious injuries that
 24 were painful and required medical treatment; Defendants further knew that they had a duty
 25 to provide Mr. Roberts medical care including pain relief; and Defendants intentionally
 26 delayed, or denied Mr. Roberts urgently need medical treatment.

1 5.4 As a result of Defendants' deliberate indifference to Mr. Robert's need for medical
2 treatment, Mr. Roberts suffered damages and deprivation of constitutional rights, as
3 described herein.

4 5.5 By the actions and omissions described above, these Defendants violated 42 U.S.C. §
5 1983, depriving Mr. Roberts of the right to be free from deliberate indifference to Mr.
6 Roberts' serious medical needs while in custody and confined in jail as a pretrial detainee, as
7 secured by the Fourteenth Amendment.

8 5.6 As a proximate result of the foregoing wrongful acts and/or omissions, Mr. Roberts
9 sustained injuries and damages as set forth above. Mr. Roberts is therefore entitled to
10 general and compensatory damages in an amount to be proven at trial.

11 5.7 In committing the acts alleged above, these Defendants acted maliciously and/or
12 were guilty of a wanton and reckless disregard for the rights, safety, and emotional
13 wellbeing of Mr. Roberts and by reason thereof, Mr. Roberts is entitled to punitive damages
14 and penalties allowable under 42 U.S.C. § 1983 and other state and federal law against these
15 Defendants.

16 5.8 By virtue of the facts set forth above, as supervisors Defendant Kitsap County and
17 its Policymaking Defendants, and CCS each permitted and failed to prevent the
18 unconstitutional acts of other Defendants and individuals under their supervision and
19 control, and failed to properly supervise such individuals with deliberate indifference to the
20 rights and medical needs of Mr. Roberts and are liable under *Monell v. Department of Social*
21 *Services of City of New York*, 436 U.S. 658 (1978), in that a policy or custom can be inferred
22 from a showing of ratification of an unconstitutional act and their policies, customs, and
23 established practices.

VI. THIRD CAUSE OF ACTION

Negligence, Gross Negligence, and Negligence *Per Se*

6.1 Defendants CCS and Does 1-15 are not subject to prefiling tort claim requirements.

At all material times, Defendants CCS and Does 1-15 owed Mr. Roberts the duty to act with due care in the execution and/or enforcement of any right, law, or legal obligation.

6.2 At all material times, Defendants CCS and Does 1-15 owed Mr. Roberts the duty to act with due care in the execution and/or enforcement of any right, law, or legal obligation.

**VII. FOURTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress**

7.1 Defendants CCS and Does 1-15 are not subject to prefiling tort claim requirements.

The negligence and deliberate indifference of Defendants CCS and Does 1-15, as described above caused Mr. Roberts emotional distress, and as a direct and proximate result, Mr. Roberts suffered damages, and continues to incur damages in an amount to be established at trial.

VIII. DISCOVERY AND LIMITED PHYSICIAN/PATIENT WAIVER

8.1. Plaintiffs waives the physician patient privilege ONLY to the extent required by RCW 5.60.060, as limited by the Plaintiffs constitutional rights of privacy, contractual rights of privacy and the ethical obligation of physicians and attorneys not to engage in *ex parte* contact between a treating physician and the patient's legal adversaries.

IX. JURY DEMAND

9.1 Plaintiff hereby demands a jury trial.

X. AMENDMENTS

10.1 Plaintiff hereby reserves the right to amend this Complaint.

XI. PRAYER FOR RELIEF

1 11.1 Adjudge and declare that the actions, customs, and policies, and practices of
2 Defendants described in this Complaint violated Mr. Robert's rights under the federal and
3 state constitutions and award Mr. Roberts economic and noneconomic damages pursuant to
4 42 U.S.C. §§ 1983 and 1988, in an amount to be determined at trial;

5 11.2 Punitive damages under 42 U.S.C. § 1983, federal law and Washington law, in an
6 amount according to proof and which is fair, just, and reasonable;

7 11.3 All other damages, penalties, costs, interest, and attorneys' fees as allowed by 42
8 U.S.C. §§ 1983 and 1988; and as otherwise may be allowed by Washington and/or federal
9 law.

10 11.4 That Plaintiff be awarded general and special damages against Defendants CCS and
11 Does 1-15 in an amount to be proven at trial for negligence, gross negligence, negligence *per*
12 *se*, and negligent infliction of emotional distress as allowed by law including but not limited
13 to past and future medical expenses and other health care expenses; past and future loss of
14 earnings; permanent partial impairment of earnings and earning capacity; pain and suffering,
15 both mental and physical; past and future permanent partial disability; loss of enjoyment of
16 life and for reduction of life expectancy; past and future special damages; and interest
17 calculated at the maximum amount allowable by law, including prejudgment interest.

18 11.5 For such other and further relief as the Court deems just and equitable.

22 DATED this 5 day of February, 2021.
23

24 KITSAP LAW GROUP
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Kylie J. Finnell WSBA #34997
Attorney for Plaintiffs